

I. MOTION FOR DEFAULT JUDGMENT

1. This suit was originally filed in the 99th District Court of Lubbock County, Texas on September 25, 2018, as Cause No. 2018-532,364; Siwell, Inc. d/b/a Capital Mortgage Services of Texas, Plaintiff v. William Berthelette, Defendant (the “State Court Petition”).

2. The Lubbock County case access database indicates that Defendant Berthelette was served with citation and the State Court Petition on September 29, 2018.¹

3. A thorough review of both the State Court case record and the record of this suit after removal to this honorable Court show that no answer has been filed by Defendant Berthelette in accordance with FRCP 12(a) and/or Tex. R. Civ. P. §83.^{2,3}

4. In November 2018, the State Court Petition was amended to name Land Gorilla, LLC as another Defendant.

5. This suit was removed to this Honorable Court soon after.

6. A federal court takes a case where positive affirmative action of state court left it. *McDonnell v. Wasenmiller*, 74 F.2d 320, 1934 U.S. App. LEXIS 3951 (8th Cir. 1934).

7. When a case is removed to federal court, that court takes it as though everything done in state court had in fact been done in federal court, but federal court is not bound by any rule of state practice that is in conflict with federal statute. *Savell v. Southern R. Co.*, 93 F.2d 377, 1937 U.S. App. LEXIS 2817 (5th Cir. 1937).

II. PRAYER

¹ Proof of service of citation of the State Court Petition is filed in this suit as Document No. 25, and is attached hereto as Exhibit A.

² See Exhibit B, State Court Record.

³ See Exhibit C, Federal Court Record.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests the Court to enter a Default Judgment on all claims herein asserted, decreeing that Defendant is liable to Plaintiff on all issues and for damages in the amount of \$59,226.64; post-judgment interest at 5% per annum or the statutory rate, whichever is greater; plus all other and further relief to which Plaintiff may be justly entitled.

DATED this 12th day of January 2021.

Respectfully submitted,

THE LAW OFFICE OF KEITH C. THOMPSON, PC
11003 Quaker Avenue
Lubbock, Texas 79424
Telephone: 806-783-8322
Fax: 806-783-8357
SBN: 24013631
kct@kctlaw.us

/s/ Keith C. Thompson
KEITH C. THOMPSON

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded to WILLIAM BERTHELETTE AT 2473 Lake Road, Ridgeway, SC 29130 Via Certified Mail on the 12th day of January 2021.

/s/ Keith C. Thompson
Keith C. Thompson

Exhibit A

RETURN OF SERVICE
CITATION

Issued: September 26, 2018

Lubbock County Cause Number: 2018532364
99th District Court

Sewell, Inc., d/b/a Capital Mortgage Services of Texas
V.
William Berthelette

2018 OCT -1 PM 1:29

PERSON OR ENTITY TO BE SERVED AND ADDRESS FOR SERVICE:

William Berthelette
2473 Lake Road, Ridgeway, SC 29130

VERIFICATION OF DISTRICT CLERK
CITATION BY CERTIFIED MAIL

Came to hand on Wednesday, September 26, 2018, at 10:49 AM, and executed in Lubbock County, Texas, by mailing to the defendant, by certified mail, restricted delivery, return receipt requested, a true copy of this Citation together with a copy of the ORIGINAL PETITION, to wit:

TRACKING INFORMATION:

CMRR # 9414814902356190006433

DATE MAILED: Wednesday, September 26, 2018

CITATION SIGNED FOR BY: *signature*

DATE CITATION WAS SIGNED FOR: 9-29-18 11:32am

OR NOT EXECUTED TO DEFENDANT; The diligence used in finding said defendant, the cause of failing to execute this process and the information received as to the whereabouts of the said defendant, being:



01900266078005
CISS - CITATION ISSUED
Case No: 2018-532,364

Barbara Sucsy, District Clerk
904 Broadway, Room 105
Lubbock, Texas 79401

By

Jamie Horton
Deputy Name

Deputy



*****PLEASE SEE THE ATTACHED RETURN RECEIPT OR RETURN ENVELOPE*****

CITATION
THE STATE OF TEXAS

TO: **William Berthelette**
2473 Lake Road, Ridgeway, SC 29130

Defendant Greetings:

NOTICE

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk of the court who issued this citation by 10 o'clock a.m. on the Monday following the expiration of 20 (twenty) days after you have been served this citation and Original Petition, a default judgment may be taken against you.

Said **Plaintiff's Original Petition** was filed in the **99th District Court** of Lubbock County, Texas, on **September 25, 2018**. The file number of said suit being Cause Number **2018532364**, and styled:

Sewell, Inc., d/b/a Capital Mortgage Services of Texas,
Plaintiff
V.
William Berthelette,
Defendant

The nature of **Plaintiff's** demand is set out and shown by a true and correct copy of the **Original Petition**, accompanying this citation, and made a part thereof.

Plaintiff is represented by:

Keith C. Thompson, 11003 Quaker Avenue, Lubbock, TX 79424 (806)783-8322

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates hereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at Lubbock County, Texas, this Wednesday, September 26, 2018, at 10:49 AM.

Barbara Sucsy, District Clerk
99th District Court
P.O. Box 10536 (79408)
904 Broadway
Lubbock, Texas 79401



By

Jamie Horton

Jamie Horton

Deputy



October 1, 2018

Dear J HORTON:

The following is in response to your request for proof of delivery on your item with the tracking number:
9414 8149 0235 6190 0064 33.

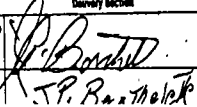
Item Details

Status: Delivered, Left with Individual
Status Date / Time: September 29, 2018, 11:32 am
Location: RIDGEWAY, SC 29130
Postal Product: First-Class Mail®
Extra Services: Certified Mail™
Return Receipt Electronic
Recipient Name: WILLIAM BERTHELETTE

Shipment Details

Weight: 3.0oz

Recipient Signature

Signature of Recipient:	Signature	
	Printed Name	J.P. Berthelette
Address of Recipient:	Delivery Point	W. 11th St. S.W.
	Address	

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004

Exhibit B

Case #	2018532364	Case Reference	900266078	Case Status	CLOSED
Plaintiff	SIWELL, INC. D/B/A CAPITAL M		Defendant	LAND GORILLA, LLC	
File Date	9/25/2018		Court	D099	
Agency Case #			Agency		
Service Date	1/26/2019		Plaintiff Attorney	THOMPSON, KEITH C	
Answer Date			Defense Attorney		
Docket Date			Docket		
Disposition Date	2/11/2019		Disposition	NOTICE OF REMOVAL	
Status Date	1/22/2019		Status	CITATION ISSUED	
Discovery Date	9/25/2018		Discovery Level	DISCOVERY LEVEL 2	
Complaint Date			Original Petition	\$0.00	
Civil Code	ACF		Description	DEBT/CONTRACT - FRAUD/MIS	
Trial End Date					

Court Access System
Case Events
Case: 2018532364

01/11/2021

Sequence	Event Date	Court	Description	Notes
1	09/25/2018	D099	PETITION FILED	Plaintiff's Original Petition PREPAID
2	09/25/2018	D099	DISCOVERY LEVEL 2	
3	09/25/2018	D099	REQUEST	Civil Process Request Form - C
4	09/25/2018	D099	CASE INFORMATION SHEET	Case Information Sheet - CMS v
5	09/26/2018	D099	CITATION ISSUED	CMRR # 9414814902356190006433 PREPAID
6	01/22/2019	D099	AMENDED PLEADING	PLAINTIFF'S FIRST AMENDED PETI
7	01/22/2019	D099	REQUEST	SERVICE REQUEST PREPAID
8	01/22/2019	D099	CITATION ISSUED	CMRR # 948901490235619025494 PREPAID
9	01/28/2019	D099	CITATION SERVED	CM SIGNED FOR
10	02/11/2019	D099	NOTICE OF REMOVAL	Notice of Removal to Federal C

Exhibit C

Sam R Cummings, presiding

Date filed: 02/11/2019

Date of last filing: 01/06/2021

History

Doc. No.	Dates	Description
1	Filed & Entered: 02/11/2019	Notice of Removal
2	Filed & Entered: 02/11/2019	Cert. Of Interested Persons/Disclosure Statement
3	Filed & Entered: 02/11/2019 Terminated: 05/01/2019	Motion to Compel
4	Filed & Entered: 02/11/2019	Brief/Memorandum in Support of Motion
5	Filed & Entered: 02/12/2019	Cummings (West Texas)
6	Filed & Entered: 02/12/2019	Notice and Instruction to Pro Se Party
7	Filed & Entered: 02/13/2019	Order to Show Cause/Order to Answer
8	Filed & Entered: 02/13/2019	Response/Objection
9	Filed & Entered: 02/14/2019	Order
10	Filed & Entered: 02/27/2019	Amended Complaint
11	Filed & Entered: 03/04/2019 Terminated: 05/01/2019	Motion for Attorney Fees
12	Filed & Entered: 03/04/2019	Brief/Memorandum in Support of Motion
13	Filed & Entered: 03/06/2019 Terminated: 03/07/2019	Motion for Miscellaneous Relief
14	Filed & Entered: 03/07/2019	Order on Motion for Miscellaneous Relief
15	Filed & Entered: 03/22/2019	Response/Objection
16	Filed & Entered: 04/05/2019	Reply
17	Filed & Entered: 04/09/2019 Terminated: 04/10/2019	Motion for Leave to File
18	Filed & Entered: 04/10/2019	Order on Motion for Leave to File
19	Filed & Entered: 04/10/2019	Sur-reply
20	Filed & Entered: 05/01/2019	Order of Dismissal or Administrative Closure
21	Filed & Entered: 11/19/2020 Terminated: 11/23/2020	Motion to Reopen Case
22	Filed & Entered: 11/23/2020	Order on Motion to Reopen Case
23	Filed & Entered: 12/04/2020 Terminated: 12/28/2020	Motion for Default Judgment
24	Filed & Entered: 12/28/2020	Order on Motion for Default Judgment
25	Filed & Entered: 01/06/2021	Affidavit of Service

Transaction Receipt			
01/11/2021 16:22:34			
PACER Login:	thompson0387:2801741:0	Client Code:	CMS v. Berthalette LG
Description:	History/Documents	Search Criteria:	5:19-cv-00025-C
Billable Pages:	1	Cost:	0.10